

# SENATE BILL REPORT

## HB 3172

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As of February 23, 2006

**Title:** An act relating to unsolicited facsimiles.

**Brief Description:** Penalizing persons who transmit unsolicited facsimiles.

**Sponsors:** Representatives Anderson, Rodne and Morrell.

**Brief History:** Passed House: 2/13/06, 98-0.

**Committee Activity:** Water, Energy & Environment: 2/23/06.

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Staff:** William Bridges (786-7424)

**Background:** State Law. It is a violation of the Consumer Protection Act (CPA) to send an unsolicited telefacsimile message promoting goods or services for purchase by the recipient. This prohibition does not apply to messages sent to a recipient with whom the sender has had a prior contractual or business relationship. A sender violating the law may be sued for \$500 or the recipient's actual damages, whichever is greater. In addition, the CPA provides for fines, treble damages, court costs, and attorneys' fees.

Federal Law. In July of 2005, Congress enacted the Junk Fax Prevention Act (Act). The Act permits businesses or entities to send unsolicited advertisements to consumers and businesses with whom the sender has an established business relationship. It also requires fax advertisements to include a notice and contact information on the first page of the fax informing the recipient how to "opt-out" of any future fax advertisements from the sender. The Act directs the FCC to issue regulations to implement these amendments no later than April 5, 2006.

**Summary of Bill:** The Washington Utilities and Transportation Commission (WUTC) is authorized to initiate proceedings involving unsolicited faxes. It may issue investigative demands or subpoenas, administer oaths, and conduct hearings. Any hearings conducted must be in accordance with the Administrative Procedures Act.

Any person who sends an unsolicited fax may be subject to (a) a cease and desist order; and (b) an administrative fine between \$500 and \$1,000. Each page of an unsolicited fax may constitute a separate violation.

Any person who intentionally sends an unsolicited fax is guilty of a misdemeanor punishable by a mandatory fine of up to \$1,000 per violation. A person has intentionally sent an unsolicited fax if the Attorney General has previously notified the person by certified mail that he or she is in violation of this Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Legislature has dealt with e-mail spam, now it needs to tackle unsolicited faxes. A striking amendment has been prepared to move unsolicited faxes from WUTC jurisdiction to the Attorney General's consumer protection division.

**Testimony Against:** None.

**Testimony Other:** The bill expands WUTC jurisdiction beyond public service companies. There are legal concerns about subjecting individuals to the commission's regulatory process. The WUTC will support the bill if amended. However, the amendment will be a temporary solution because the FCC will soon issue regulations on this subject.

**Who Testified:** PRO: Rep. Anderson, prime sponsor.

OTHER: Dave Danner, WUTC.